

MAR 24 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GEORGE BASSELL, IV,

Defendant - Appellant.

No. 08-30133

D.C. No. 2:03-02117-EFS-1

MEMORANDUM^{*}

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GEORGE BASSELL, IV,

Defendant - Appellant.

No. 08-30140

D.C. No. 2:03-cr-02060-EFS-1

Appeal from the United States District Court
for the Eastern District of Washington
Edward F. Shea, District Judge, Presiding

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

In these consolidated appeals, George Bassell, IV appeals from the two consecutive 12-month sentences of supervised release imposed following revocation of supervised release in Case Nos. 08-30133 and 08-30140. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate and remand.

Bassell contends that the district court abused its discretion by imposing drug testing and substance abuse treatment as conditions of supervised release. We disagree, in light of Bassell's prior use of methamphetamine. *See United States v. Carter*, 159 F.3d 397, 399-401 (9th Cir. 1998); *cf. United States v. Napier*, 463 F.3d 1040, 1044 (9th Cir. 2006).

Bassell also contends that the district court orally imposed a six-month term of supervised release in both cases which was clearly inconsistent with the subsequent written judgments, such that the oral sentence controls. However, the record reflects that the district court imposed a 24-month term of supervised release at the close of the sentencing hearing, which was not inconsistent with the subsequent judgments.

** The panel unanimously finds this case suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.

Bassell further contends, and the government concedes, that the district court erred by imposing consecutive terms of supervised release. We agree. *See* 18 U.S.C. § 3624(e); *United States v. Sanders*, 67 F.3d 855, 856 (9th Cir. 1995) (terms of supervised release may not be imposed consecutively). Moreover, the combined term of supervised release exceeded the applicable statutory maximum. Accordingly, we vacate and remand for resentencing consistent with this opinion.

VACATED and REMANDED.